PSC Organizational Structure

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Introduction

Since 1975, Montana's Public Service commissioners have been elected to 4-year terms from five different districts across the state to supervise and regulate public utilities in the state. The commission itself, however, has been in place for more than 100-years. It has been the source of spirited debate and a lightning rod for criticism. It also has been charged with striking a balance between fair rates and service and appropriate returns -- a mandate few would envy.

The 2011-12 Energy and Telecommunications Interim Committee set aside time in their work plan to analyze the statutes that establish the organization and structure of the Public Service Commission (PSC), including a discussion of options for replacing the five-member elected commission with an appointed commission, terms of office, vacancies, and use of districts.

The PSC is established in Title 69, chapter 1, part 1. It sets out a five-member commission. Commissioners serve four-year terms and are elected from five separate districts -- also established in law. Like other elected officials in Montana, commissioners are subject to term limits. If there is a vacancy on the commission, the governor appoints a new commissioner who holds office until the next general election and until a successor is elected. The commission is charged with supervising and regulating the operations of public utilities, common carriers, railroads and other regulated entities, as established in Title 69.

The focus of the ETIC's work is not on the authority or duties of the PSC, but instead is focused on its organizational structure. A topic that has been visited by researchers and legislators on a number of occasions.

Background

Montana established a Board of Railroad Commissioners in 1907 that consisted of three commissioners elected at-large to 6-year terms. The railroad commissioners became ex officio members of the first Montana Public Service Commission (PSC) created in 1913. In 1971 an executive reorganization eliminated the Board of Railroad Commissioners and established the Department of Public Service Regulation. In 1974, the Legislature eliminated the three-member PSC and created the current structure, with five elected members from separate districts. (Chapter 339, Laws of 1974).

Creation of the PSC in 1913 was a concession by the Montana Legislature that utility and railroad regulation required an attention to detail and knowledge that the Legislature was unable to provide, according to a report authored by James Lopach, a then visiting assistant professor at

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Exhibit 20

the University of Montana, Political Science Department.[1] The PSC was established to protect consumers by supervising, controlling and regulating public utilities. Lopach is the author of a 1974 report that analyzed the PSC's organizational structure. At that time he concluded that the regulatory design of the PSC "has been less effective than was expected."

Lopach identifies the commissioner selection process as one of several weaknesses that plague the commission. "Because of the great responsibility and the intense policy conflict at the heart of public utility regulation, the commissioner selection process should be able to recruit persons with relevant training, abilities, and interest." He notes that utility regulation requires some pertinent professional background or a demonstrated capacity to acquire the equivalent background. In 1974, Lopach wrote, "Montana Public Service Commissioners, with very few exceptions, have come to the position without impressive credentials." He goes on to say that name recognition had largely influenced PSC elections, as opposed to pre-commission work experience or professional training.

Lopach outlines additional weaknesses in the commission's organizational structure, concluding, "The Governor should appoint highly-paid persons of unquestionable professional stature to serve as commissioners. Professional commissioners would accompany their decisions with reasoned opinions telling why a case was so decided."

A review of the credentials of PSC members elected since 1990, shows that members come from varied backgrounds. At least four of the last 24 members had advanced degrees in political science, and at least 14 commissioners had college degrees. Professional backgrounds varied from ranchers and oil producers to attorneys and nonprofit directors. Of the 24 commissioners elected since 1990, at least 16 were former Montana legislators.

Since the 1990s, state elected officials have received automatic pay adjustments every two years based on a survey of the salaries for the same posts in Idaho, Wyoming, North Dakota, South Dakota and Montana. Legislative approval is not required for an increase. Prior to the laws enactment, the Legislature set elected officials' salaries, and there were often discussions of duties, responsibilities, and, obviously, compensation. In Fiscal Year 1990, the PSC chairman's salary was $38,297 and increased to $39,254 in July 1, 1990. Other commission salaries were $37,044, increasing to $37,970. As of July 1, 2011, the PSC chairman's salary was set at $95,651 and members could earn $94,531. It should be noted that some declined the 8% increase in 2011 and now earn between $87,557 and $88,528.

Lopach, in his 1974 analysis, is straightforward in noting that the weakness of the PSC is largely due to a flawed organizational structure that the Legislature established. "All paths to change of the Montana regulatory situation lead to the Montana Legislative Assembly." He goes on to outline a variety of legislation introduced between 1915 and 1973 to abolish, study, or alter the

[1] "The Montana Public Service Commission: A Profile in Weakness", James J. Lopach, Montana Public Affairs, Bureau of Government Research, University of Montana, April 1974.

PSC. "As the parent of the regulatory body, the Legislature repeatedly stifled the commission's growth and ability to innovate."

Much of the legislation introduced in that timeframe would have altered the process for commission and staff selection. Three bills would have had the Governor appoint commissioners, and one called for a single appointed public utility commissioner. One of the most "radical" legislative proposals was introduced in 1971 and would have created a utility consumer's counsel in the Attorney General's office to represent consumers in rate cases, according to Lopach's research.

In the last 20 years, there has been limited legislation related to altering the organizational structure of the PSC. As discussed later in this report, there have been audits of the agency. There also have been a number of bills amending the PSC's duties and discussions of PSC salaries.

Previous Analysis

During the 1972 Montana Constitutional Convention, Missoula delegate George Heliker proposed having a single commissioner appointed by the governor. His proposal would have established the commissioner's role as a "defender of consumer interests." His proposal was opposed by large and small utilities and rejected by other delegates on the Public Health, Welfare, Labor, and Industry Committee.[2] "The committee majority said that the matter should be left to the Legislature, that it was too experimental to be taken seriously, and that they had received little evidence that the present regulatory system was not satisfactory."[3]

The committee did recommend language included in Montana's Constitution establishing the Montana Consumer Counsel. The following language was approved with 49 delegates in favor and 38 opposed: "The Legislature shall provide for an office of Consumer Counsel which shall have the duty of representing consumer interests in hearings before the Public Service Commission or any other successor agency. The Legislature shall provide for the funding of the office of Consumer Counsel by a special tax on the net income or gross revenues of regulated companies."[4]

The Legislature throughout time has taken a look at the PSC -- with a greater focus on its duties and responsibilities as opposed to its organizational structure. The 1977 Legislature enacted legislation that terminated a number of boards and agencies, including the PSC. The law, called the "Sunset Law", required the Legislative Audit Committee to conduct a performance review of

[2] Montana Constitutional Convention, Verbatim Transcript, Volume VI, March 15, 1972, pages 2373 through 2404.

[3] "The Montana Public Service Commission: A Profile in Weakness", James J. Lopach, Montana Public Affairs, Bureau of Government Research, University of Montana, April 1974.

[4] Montana Constitution, Article XIII, Section 2.

potentially terminated agencies, including the PSC. The performance review was charged with objectively examining the commission and offering recommendations for reestablishment, modification, or termination.[5] The 1981 Legislature also passed Senate Joint Resolution No. 27, requiring the Audit Committee to study the Montana public utility regulatory system and the results produced by the system in conjunction with the sunset audit. The audit did not look at the issue of elected versus appointed commissioners. Ultimately, the audit did conclude, "Since most public utilities operate as quasi-monopolies in their given service area, there would be little competition to provide control over rates and services. There would also be less control over the quality of service provided by most utilities. For this reason, there is a general consensus among the commissioners, the public, and the major utilities that there should be state regulation of gas, telephone, electric, and other privately owned utilities."[6]

In 2003 Governor Martz appointed an Energy Consumer Protection Task Force. The task force examined the PSC's organizational structure and the PSC's overall authority. That task force also ultimately focused on the PSC's powers and duties, as opposed to recommending changes to the organization's structure. While meeting records for the task force are sparse, many of its members are still active in the utility field. Staff visited with a few members who noted that the task force didn't pursue changes to the organizational structure largely because it was difficult to determine if changing from elected to appointed public utility commissioners would result in any quantifiable improvement for regulated utilities or customers.

Additional Study

There have been a number of studies over the last 20 years examining the role of elected and appointed public service commissioners in the U.S. The results of those studies also have varied.

In 1998, Heather Campbell, then an associate professor at the University of Arizona, analyzed whether utility rates favored utilities more when commissioners were appointed. Contrary to expectations, Campbell found that utility rates tended to favor utilities when commissioners were elected. Campbell found that the majority of people who take an informed interest in public service commission elections are typically industry insiders.[7] Elected commissioners make decisions in response to their voters, she finds, but those voters aren't necessarily the public at large. She also found that regulated utilities appeared to ask more from elected commissioners. Firms often padded their requests related to rates, increasing the difficulty in sorting out the "real story." She notes that because elected commissioners generally allowed utilities more profit than

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[5]"Public Service Commission and Department of Public Service Regulation, " Office of the Legislative Auditor, September 1982.

[6]Ibid, page 30.

[7] "The Politics of Requesting: Strategic Behavior and Public Utility Regulation," Journal of Policy Analysis and Management, Heather E. Campbell, December 1998.

appointed commissioners, utilities in an elected-commissioner environment were more able to plan for long-term infrastructure costs.

Other studies have found elected regulators are more responsive to consumers. In 2000 a study examined differences in electricity prices for three types of tariffs in 40 states that had the same regulatory regime from 1960 to 1997. Researchers found that residential prices were significantly lower in states that elected regulators -- about $60 less per household in 1992 dollars.[8]

And finally, in 1984 a study noted, "In summary, it probably makes little difference to the average ratepayer whether a PUC is elected or appointed."[9]

In discussing elected versus appointed commissioners, researches also have examined electric utility bond ratings to determine whether there is a pattern related to organizational structure. In a 1995 study, a researcher examined investor-owned utilities between 1979 to 1983 and found that the election of public utility commissioners negatively impacted bond ratings -- primarily because elections led to more pro-consumer choices.[10] Investor-owned regulators closely monitor ratings, in part because they are critical when financing upgrades or pursing new projects. Analysts from Standard & Poor's ratings services, Fitch Ratings, and Moody's discussed some of the basics in an interview with *Electric Light and Power* magazine. The magazine asked how political environments and managerial sophistication are evaluated "without being too subjective." Standard & Poor responded that "when decisions are made based on satisfying a particular constituency but run counter to the financial health of a utility, it's quite clear that political factors have encroached upon the process, and are negatively affecting credit quality." The representative from Fitch noted that evaluating political factors can be a challenge. Moody's was straight forward, noting, "a city council that continues to reject adequate rate requests and leaves the utility with limited financial margins would clearly reflect political risk." [11]

Other States

Montana is one of only 11 states that elects its public service commissioners. In 37 other states, commissioners are appointed by either the Governor or the Legislature. In two states, the Legislature elects the commissioners. Seven states have constitutionally created public service

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[8]Elected versus Appointed Regulators: Theory and Evidence, Timothy Besley, London School of Economics and Stephen Coate, Cornell University

[9]Electing Regulators: The Case of Public Utility Customers, Kenneth W. Costello, Yale University, Yale Journal on Regulation, 2 Yale J. on Reg. 83, page 104.

[10]Public Utility Regulation and Bond Ratings, John P. Formby, Public Choice, Vol. 84, July 1995, pages 119-136.

[11]Electric Light and Power, Public Power Credit Ratings, Nancy Spring, managing editor September 2007, Issue 5.

commissions. Montana's Public Service Commission is established in statute, Title 69, chapter 1, part 1, MCA. It is not a constitutionally created entity.

In most states, there is a Public Service Commission or Public Utility Commission, but in a handful of states those commissions have duties that go beyond regulation of traditional public utilities. Additional roles include overseeing the incorporation of businesses and organizations, securities regulation, railroad oversight, and pipeline safety. Many of these commissions are referred to as Corporation Commissions. Below is a snapshot of the 50 states and the organization of their commissions.

Organizational Overview of Utility Regulators in 50 U.S. States			
Entity	**Organization**	**Number of Commissioners**	**Terms**
Elected by Voters			
Alabama Public Service Commission	No two members can be elected from the same congressional district.	3	4 years
Arizona Corporation Commission	The Arizona Constitution establishes the Commission and requires members be elected. In 2000, voters approved a measure, placed on the ballot by the Legislature, expanding the Commission from 3 to 5. The measure also changed the term of office from a six-year term to a four-year term with the possibility of reelection to one additional term. The measure was introduced to bring more stability to the body and to solve past problems with open meeting requirements.	5	4 years
Georgia Public Service Commission	Elected statewide, while representing districts.	5	6 years
Louisiana Public Service Commission	Constitutionally created entity. Elected from districts.	5	6 years
Montana Public Service Commission	Elected from five districts.	5	4 years
Mississippi Public Service Commission	Elected from three districts.	3	4 years

Nebraska Public Service Commission	Elected from five districts.	5	6 years
New Mexico Public Regulation Commission	Elected from five districts. Article XI of the Constitution establishes the Commission.	5	4 years
North Dakota Public Service Commission	Elected statewide.	3	6 years
Oklahoma Corporation Commission	Elected statewide. Created by state Constitution.	3	6 years
South Dakota Public Utilities Commission	Elected statewide.	3	6 years

Elected by General Assembly

Entity	Organization	Number of Commissioners	Terms
Public Service Commission of South Carolina	A joint session of the General Assembly elects the Commission. There is one commissioner from each of the six districts and one commissioner at-large.	7	4 years
Virginia State Corporation Commission	Elected by the General Assembly.	3	6 years

Appointed by Governor and Legislature

Entity	Organization	Number of Commissioners	Terms
Arkansas Public Service Commission	Appointed by the Governor. Confirmed by the Senate.	3	6 years
Regulatory Commission of Alaska	Appointed by the Governor. Confirmed by the Legislature.	5	6 years
California Public Utilities Commission	Appointed by the Governor. Confirmed by the Senate.	5	6 years

Colorado Public Utilities Commission	Appointed by the Governor. Confirmed by the Senate.	3	4 years
Connecticut Public Utilities Control Authority	Appointed by the Governor. Confirmed by both houses of the General Assembly. Not more than three members can be members of any one political party. Appointees must have education or training and three or more years of experience in one or more of the following fields: economics, engineering, law, accounting, finance, utility regulation, public or government administration, consumer advocacy, business management, and environmental management. At least one needs experience in utility customer advocacy.	5	4 years
Delaware Public Service Commission	Appointed by the Governor. Confirmed by the Senate. Members must be appointed from different counties, and no more than three members can be from the same political party.	5	5 years
Florida Public Service Commission	Appointed by the Governor. Confirmed by the Senate.	5	4 years
Hawaii Public Utilities Commission	Appointed by the Governor. Appointees should have experience in accounting, business, engineering, government, finance, law, or other similar fields.	3	6 years
Idaho Public Utilities Commission	Appointed by the Governor. Confirmed by the Senate. No more than two can be from any one political party.	3	6 years

Illinois Commerce Commission	Appointed by the Governor. Confirmed by the Senate. No more than three commissioners may belong to the same political party.	5	5 years
Indiana Utility Regulatory Commission	Appointed by the Governor. One member must be an attorney. No more than three members can belong to the same political party.	5	4 years
Iowa Utilities Board	Appointed by the Governor. Confirmed by the Senate. No more than two members can be from the same political party.	3	6 years
Kansas Corporation Commission	Appointed by the Governor. Confirmed by the Senate. No more than two of the members may belong to the same political party.	3	4 years
Kentucky Public Service Commission[12]	Appointed by the Governor. Confirmed by the Senate.	3	4 years
Maine Public Utilities Commission	Appointed by the Governor. Confirmed by the Senate.	3	6 years
Maryland Public Service Commission	Appointed by the Governor. Confirmed by the Senate.	5	5 years
Massachusetts Department of Public Utilities Commission	Appointed by the Secretary of the Executive Office of Energy and Environmental Affairs with the Governor's approval. Commission members must have expertise in electricity or natural gas matters.	3	2 members serve a term concurrent with the Governor; 1 member serves 4 years
Michigan Public Service Commission	Appointed by the Governor. Confirmed by the Senate. No more than two Commissioners may represent the same political party.	3	6 years

[12] The 2011 Legislature approved Senate Bill No. 151, directing the Kentucky Legislative Research Commission to study the positive and negative effects of electing commissioners. Recommendations are expected by December 2011.

Minnesota Public Utilities Commission	Appointed by the Governor. No more than 3 commissioners can be from the same political party. At least one must reside outside the seven-county metropolitan area.	5	6 years
Missouri Public Service Commission	Appointed by the Governor. Confirmed by the Senate.	5	6 years
Public Utilities Commission of Nevada	Appointed by the Governor. Commissioners must have at least two years of experience in one or more of the following fields: accounting, business administration, finance or economics, administrative law, or professional engineering. No more than two members can be from the same political party or same field of experience.	3	4 years
New Hampshire Public Utilities Commission	Appointed by the Governor. Confirmed by the Executive Council.	3	6 years
New Jersey Board of Public Utilities	Appointed by the Governor. Confirmed by the Senate.	5	6 years
New York Public Service Commission	Appointed by the Governor. Confirmed by the Senate. No more than three may be members of the same political party.	5	6 years
North Carolina Utilities Commission	Appointed by the Governor. Confirmed by the General Assembly.	7	8 years

Public Utilities Commission of Ohio	Appointed by the Governor. Confirmed by the Senate. The governor's selection is made from a list of names submitted by a Nominating Council, a broad-based 12-member panel charged with screening candidates for the position of commissioner.	5	5 years
Oregon Public Utility Commission	Appointed by the Governor. Confirmed by the Senate. No more than two members can be from any one political party. In 1986, Oregon voters approved a ballot measure that returned the public service office to a three-person, appointed commission. It had been elected, a single office, and appointed throughout history.	3	4 years
Pennsylvania Public Utility Commission	Appointed by the Governor. Confirmed by the Senate.	5	5 years
Rhode Island Public Utilities Commission	Appointed by the Governor. Confirmed by the Senate.	3	6 years
Tennessee Regulatory Authority	In 1996 the Tennessee Railroad and Public Utilities Commission, a three-member elected body, was dissolved. Its functions were transferred to the Tennessee Regulatory Authority. It includes four directors selected by the Governor, the Lt. Governor, the Speaker of the House, and a joint appointee.	4	6 and 3 years
Public Utility Commission of Texas	Appointed by the Governor. Confirmed by the Senate.	3	6 years
Utah Public Service Commission	Appointed by the Governor. Confirmed by the Senate.	3	6 years
Vermont Public Service Board	Appointed by the Governor. Confirmed by the Senate.	3	6 years

Washington Utilities and Transportation Commission	Appointed by the Governor. Confirmed by the Senate. No more than two members can be from the same political party.	3	6 years
Public Service Commission of West Virginia	Appointed by the Governor. Confirmed by the Senate. No more than two members can be from the same political party.	3	6 years
Wisconsin Public Service Commission	Appointed by the Governor. Confirmed by the Senate.	3	6 years
Wyoming Public Service Commission	Appointed by the Governor. Confirmed by the Senate. No more than two members can be from the same political party.	3	6 years

Conclusion

A number of studies recognize that the question of appointed versus elected is just one aspect tied to effective regulation. It is difficult to discern to what degree politics can or do influence regulatory decisions, whether or not a commissioner is appointed or elected. Adequate staff also is critical in keeping commissioners up-to-date and informed of complex topics to assist in decision making, and a reasonable salary is important to attract educated commissioners with appropriate professional backgrounds.

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